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Legislative History – Montana Session Law

Chapter: 80

Session L: 2009

Bill Number: SB40

Checklist of Bill History

History and Final Status Sheet



Introduced Bill



Fiscal Note



Third Reading Bill



Final Version of Bill



House

Committee: Judiciary

Hearing Date(s): 1/30/2009

Committee Report: 3/4/2009

Senate

Committee: Judiciary

Hearing Date(s): 1/7/2009

Committee Report: 1/9/2009

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: SK Marshall

Date: 12/1/2025

Notes: Audio/Video recordings can be found here:

<https://sg001-harmony.sliq.net/00309/Harmony/en>

Thank you!



AN ACT CLARIFYING THE DEFINITION OF "FRIEND OF RESPONDENT" IN INVOLUNTARY COMMITMENT PROCEDURES; REQUIRING A FINDING THAT THERE IS A PERSON WILLING AND ABLE TO SERVE AS A FRIEND OF RESPONDENT AND CONSENT OF THE RESPONDENT PRIOR TO APPOINTMENT OF A FRIEND OF RESPONDENT; REQUIRING THE APPOINTMENT OF AN ALTERNATE FRIEND OF RESPONDENT AT THE REQUEST OF THE RESPONDENT OR IF A CONFLICT OF INTEREST IS DETERMINED TO EXIST; AMENDING SECTIONS 53-21-102 AND 53-21-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Behavioral health inpatient facility" means a facility or a distinct part of a facility of 16 beds or less licensed by the department that is capable of providing secure, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency.

(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) "Court" means any district court of the state of Montana.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. ~~The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.~~

(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

- (i) addiction to drugs or alcohol;
- (ii) drug or alcohol intoxication;
- (iii) mental retardation; or
- (iv) epilepsy.

(c) A mental disorder may co-occur with addiction or chemical dependency.

(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) "Mental health professional" means:

- (a) a certified professional person;
- (b) a physician licensed under Title 37, chapter 3;
- (c) a professional counselor licensed under Title 37, chapter 23;
- (d) a psychologist licensed under Title 37, chapter 17;
- (e) a social worker licensed under Title 37, chapter 22; or
- (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person

receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

- (i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;
- (ii) failure to follow a prescribed plan of care and treatment; or
- (iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

(13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) "Professional person" means:

- (a) a medical doctor;
- (b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing;
- (c) a licensed psychologist; or
- (d) a person who has been certified, as provided for in 53-21-106, by the department.

(17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(19) "State hospital" means the Montana state hospital."

Section 2. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment -- filing of -- initial hearing on. (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in 47-1-201, to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent

must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person ~~and a friend of respondent~~ and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

~~(b) The desires of the respondent must be taken into consideration in the appointment of the friend of respondent~~ If the court finds that an appropriate person is willing and able to perform the functions of a friend of respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court shall change the designation of the friend of respondent at the request of the respondent or if it determines that a conflict of interest exists between the respondent and the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in 47-1-201, to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

Section 3. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0040, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2019.

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 40

INTRODUCED BY C. JUNEAU

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

AN ACT CLARIFYING THE DEFINITION OF "FRIEND OF RESPONDENT" IN INVOLUNTARY COMMITMENT PROCEDURES; REQUIRING A FINDING THAT THERE IS A PERSON WILLING AND ABLE TO SERVE AS A FRIEND OF RESPONDENT AND CONSENT OF THE RESPONDENT PRIOR TO APPOINTMENT OF A FRIEND OF RESPONDENT; REQUIRING THE APPOINTMENT OF AN ALTERNATE FRIEND OF RESPONDENT AT THE REQUEST OF THE RESPONDENT OR IF A CONFLICT OF INTEREST IS DETERMINED TO EXIST; AMENDING SECTIONS 53-21-102 AND 53-21-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Exported Data

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
03/25/09	Chapter Number Assigned				
03/25/09	(S) Signed by Governor				
03/19/09	(S) Transmitted to Governor				
03/19/09	(H) Signed by Speaker				
03/19/09	(S) Signed by President				
03/18/09	(S) Returned from Enrolling				
03/18/09	(C) Printed - New Version Available				
03/17/09	(S) Sent to Enrolling				
03/17/09	(S) 3rd Reading Passed as Amended by House		47	0	
03/17/09	(S) Scheduled for 3rd Reading				
03/16/09	(S) 2nd Reading House Amendments Concurred on Voice Vote		49	0	
03/16/09	(S) Scheduled for 2nd Reading				
03/07/09	(H) Returned to Senate with Amendments				
03/07/09	(H) 3rd Reading Concurred		90	6	
03/07/09	(H) Scheduled for 3rd Reading				
03/06/09	(H) 2nd Reading Concurred		94	4	
03/06/09	(H) Scheduled for 2nd Reading				
03/04/09	(C) Printed - New Version Available				
03/04/09	(H) Committee Report--Bill Concurred as Amended	(H) Judiciary			
03/04/09	(H) Committee Executive Action--Bill Concurred as Amended	(H) Judiciary	16	2	
01/30/09	(H) Hearing	(H) Judiciary			
01/17/09	(H) Referred to Committee	(H) Judiciary			
01/17/09	(H) First Reading				
01/16/09	(S) 3rd Reading Passed		41	7	
01/16/09	(S) Transmitted to House				
01/16/09	(S) Scheduled for 3rd Reading				
01/14/09	(C) Printed - New Version Available				
01/14/09	(S) 2nd Reading Passed as Amended		48	2	
01/14/09	(S) 2nd Reading Motion to Amend Carried		28	22	
01/14/09	(S) Scheduled for 2nd Reading				
01/09/09	(S) Committee Report--Bill Passed	(S)			

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
		Judiciary			
01/09/09	(S) Committee Executive Action--Bill Passed	(S) Judiciary	11	1	
01/07/09	(S) Hearing	(S) Judiciary			
01/05/09	(S) First Reading				
12/04/08	(S) Referred to Committee	(S) Judiciary			
12/02/08	(C) Introduced Bill Text Available Electronically				
12/02/08	(S) Introduced				
11/07/08	(C) Pre-Introduction Letter Sent				
09/30/08	(C) Draft in Assembly/Executive Director Review				
09/29/08	(C) Draft in Final Drafter Review				
09/24/08	(C) Bill Draft Text Available Electronically				
09/24/08	(C) Draft in Input/Proofing				
09/23/08	(C) Draft to Drafter - Edit Review [JLN]				
09/23/08	(C) Draft in Edit				
09/23/08	(C) Draft in Legal Review				
09/22/08	(C) Draft to Requester for Review				
06/23/08	(C) Draft Request Received				

SENATE BILL NO. 40

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BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

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commitment in dealing with legal proceedings, including consultation with legal counsel and others. ~~The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.~~

(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

- (i) addiction to drugs or alcohol;
- (ii) drug or alcohol intoxication;
- (iii) mental retardation; or
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(c) A mental disorder may co-occur with addiction or chemical dependency.

(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) "Mental health professional" means:

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(12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

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NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

- END -

SENATE BILL NO. 40

INTRODUCED BY C. JUNEAU

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE DEFINITION OF "FRIEND OF RESPONDENT" IN INVOLUNTARY COMMITMENT PROCEDURES; REQUIRING THE APPOINTMENT OF AN ALTERNATE FRIEND OF RESPONDENT IF A CONFLICT OF INTEREST IS DETERMINED TO EXIST; AMENDING SECTIONS 53-21-102 AND 53-21-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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(2) "Behavioral health inpatient facility" means a facility or a distinct part of a facility of 16 beds or less licensed by the department that is capable of providing secure, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency.

(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) "Court" means any district court of the state of Montana.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require

commitment.

(8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. ~~The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.~~

(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

- (i) addiction to drugs or alcohol;
- (ii) drug or alcohol intoxication;
- (iii) mental retardation; or
- (iv) epilepsy.

(c) A mental disorder may co-occur with addiction or chemical dependency.

(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) "Mental health professional" means:

- (a) a certified professional person;
- (b) a physician licensed under Title 37, chapter 3;
- (c) a professional counselor licensed under Title 37, chapter 23;
- (d) a psychologist licensed under Title 37, chapter 17;
- (e) a social worker licensed under Title 37, chapter 22; or
- (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person

receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

- (i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;
- (ii) failure to follow a prescribed plan of care and treatment; or
- (iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

(13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) "Professional person" means:

- (a) a medical doctor;
- (b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing;
- (c) a licensed psychologist; or
- (d) a person who has been certified, as provided for in 53-21-106, by the department.

(17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(19) "State hospital" means the Montana state hospital."

Section 2. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment -- filing of -- initial hearing on. (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in 47-1-201, to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the

substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person ~~and a friend of respondent~~ and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

~~(b) The desires of the respondent must be taken into consideration in the appointment of the friend of respondent~~ IF THE COURT FINDS THAT AN APPROPRIATE PERSON IS WILLING AND ABLE TO PERFORM THE FUNCTIONS OF A FRIEND OF RESPONDENT AS SET OUT IN THIS PART AND THE RESPONDENT PERSONALLY OR THROUGH COUNSEL CONSENTS, THE COURT SHALL APPOINT THE PERSON AS THE FRIEND OF RESPONDENT. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. The friend of respondent may not be a party in the litigation involving the respondent. Only one person may at any one time be the friend of respondent within the meaning of this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court shall change the designation of the friend of respondent AT THE REQUEST OF THE RESPONDENT OR if it determines that a conflict of interest exists between the respondent and the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in 47-1-201, to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

- END -



AN ACT CLARIFYING THE DEFINITION OF "FRIEND OF RESPONDENT" IN INVOLUNTARY COMMITMENT PROCEDURES; REQUIRING A FINDING THAT THERE IS A PERSON WILLING AND ABLE TO SERVE AS A FRIEND OF RESPONDENT AND CONSENT OF THE RESPONDENT PRIOR TO APPOINTMENT OF A FRIEND OF RESPONDENT; REQUIRING THE APPOINTMENT OF AN ALTERNATE FRIEND OF RESPONDENT AT THE REQUEST OF THE RESPONDENT OR IF A CONFLICT OF INTEREST IS DETERMINED TO EXIST; AMENDING SECTIONS 53-21-102 AND 53-21-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Behavioral health inpatient facility" means a facility or a distinct part of a facility of 16 beds or less licensed by the department that is capable of providing secure, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency.

(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) "Court" means any district court of the state of Montana.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. ~~The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.~~

(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

- (i) addiction to drugs or alcohol;
- (ii) drug or alcohol intoxication;
- (iii) mental retardation; or
- (iv) epilepsy.

(c) A mental disorder may co-occur with addiction or chemical dependency.

(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) "Mental health professional" means:

- (a) a certified professional person;
- (b) a physician licensed under Title 37, chapter 3;
- (c) a professional counselor licensed under Title 37, chapter 23;
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- (e) a social worker licensed under Title 37, chapter 22; or
- (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person

receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

- (i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;
- (ii) failure to follow a prescribed plan of care and treatment; or
- (iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

(13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) "Professional person" means:

- (a) a medical doctor;
- (b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing;
- (c) a licensed psychologist; or
- (d) a person who has been certified, as provided for in 53-21-106, by the department.

(17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(19) "State hospital" means the Montana state hospital."

Section 2. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment -- filing of -- initial hearing on. (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in 47-1-201, to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent

must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person ~~and a friend of respondent~~ and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

~~(b) The desires of the respondent must be taken into consideration in the appointment of the friend of respondent~~ If the court finds that an appropriate person is willing and able to perform the functions of a friend of respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court shall change the designation of the friend of respondent at the request of the respondent or if it determines that a conflict of interest exists between the respondent and the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in 47-1-201, to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

Section 3. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0040, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2019.

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 40

INTRODUCED BY C. JUNEAU

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

AN ACT CLARIFYING THE DEFINITION OF "FRIEND OF RESPONDENT" IN INVOLUNTARY COMMITMENT PROCEDURES; REQUIRING A FINDING THAT THERE IS A PERSON WILLING AND ABLE TO SERVE AS A FRIEND OF RESPONDENT AND CONSENT OF THE RESPONDENT PRIOR TO APPOINTMENT OF A FRIEND OF RESPONDENT; REQUIRING THE APPOINTMENT OF AN ALTERNATE FRIEND OF RESPONDENT AT THE REQUEST OF THE RESPONDENT OR IF A CONFLICT OF INTEREST IS DETERMINED TO EXIST; AMENDING SECTIONS 53-21-102 AND 53-21-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

MINUTES

MONTANA SENATE 61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: CHAIRMAN GARY L. PERRY, on January 7, 2009 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Gary L. Perry, Chairman (R)
Sen. Jim Shockley, Vice Chairman (R)
Sen. Aubyn Curtiss (R)
Sen. John Esp (R)
Sen. Greg Hinkle (R)
Sen. Larry Jent (D)
Sen. Carol C. Juneau (D)
Sen. Cliff Larsen (D)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Terry Murphy (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 1, SB 35, SB 40, SB 45, 1/7/2009

Executive Action: None

ORGANIZATIONAL MEETING

00:00:27 Sen. Perry
00:01:34 Sen. Larsen
00:03:11 Sen. Hinkle
00:04:39 Sen. Jent
00:05:18 Sen. Murphy
00:06:21 Sen. Juneau
00:09:16 Sen. McGee
00:10:58 Sen. Shockley
00:12:00 Sen. Laslovich
00:12:36 Sen. Curtis
00:13:50 Sen. Moss
00:14:45 Sen. Esp
00:15:50 Valencia Lane, Legislative Services Division (LSD)
Staffer

EXHIBIT(jus03a01)

EXHIBIT(jus03a02)

EXHIBIT(jus03a03)

00:17:05 Pam Schindler, Committee Secretary
00:17:37 Colin Roemmich, Committee Aide
00:18:09 Sen. Perry
00:19:41 Sen. McGee
00:20:45 Sen. Laslovich
00:21:02 Sen. Perry
00:21:25 Sen. Shockley
00:22:22 Sen. Perry
00:23:47 Sen. McGee
00:31:10 Ms. Lane
00:37:17 Sen. Perry
00:45:03 Sen. Juneau
00:48:05 Sen. McGee
00:50:37 Sen. Perry

00:54:08 Break for committee members

HEARING ON SB 1

Opening Statement by Sponsor:

01:02:30 **SEN. MIKE COONEY (D), SD 40**, opened the hearing on **SB 1**,
Misdemeanor for legislative leadership to violate rules.

Proponents' Testimony:

None

Opponents' Testimony:

01:11:09 Jeff Laszloffy, self

Informational Testimony:

None

Questions from Committee Members and Responses:

01:13:13 Sen. McGee
01:13:48 Sen. Cooney
01:21:47 Sen. Shockley
01:21:58 Sen. Cooney
01:23:49 Sen. Esp
01:24:22 Sen. Cooney
01:27:47 Sen. Curtiss
01:28:31 Sen. Cooney
01:34:13 Sen. Murphy
01:34:46 Sen. Cooney

Closing by Sponsor:

01:37:00 Sen. Cooney

HEARING ON SB 40

Opening Statement by Sponsor:

01:38:26 **SEN. CAROL JUNEAU (D)**, SD 8, opened the hearing on **SB 40**, Clarify friend of respondent in involuntary commitment laws.

[**EXHIBIT\(jus03a04\)**](#)

Proponents' Testimony:

None

Opponents' Testimony:

None

Informational Testimony:

01:42:33 Rep. Mike Menahan, HD 82, Lewis and Clark County Attorney

Questions from Committee Members and Responses:

01:53:47 Sen. Shockley
01:54:45 Deb Matteucci, State of Montana-Department of
Corrections, Behavioral Services, Public Health and
Human Services
01:57:36 Sen. McGee
02:00:21 Sen. Juneau
02:03:46 Sen. McGee
02:05:14 Randi Hood, State of Montana, Chief Public Defender
02:10:11 Sen. Curtis
02:10:36 Ms. Hood
02:11:02 Sen. Esp
02:11:28 Ms. Lane, LSD staffer
02:01:13 Sen. Esp
02:12:21 Ms. Hood

Closing by Sponsor:

02:13:34 Sen. Juneau

02:14:15 Break

HEARING ON SB 35

Opening Statement by Sponsor:

02:25:11 **SEN. LARRY JENT (D), SD 32**, opened the hearing on **SB 35**,
Committing jurisdiction forward physical and mental
health information to prison.

[EXHIBIT\(jus03a05\)](#)

Proponents' Testimony:

02:30:31 Aimee Grmoljez, Billings Clinic
02:31:18 Mike Mahoney, Montana State Prison, Warden
02:32:52 Ed Amberg, Montana State Hospital-Warm Springs, Director
02:33:35 Kathy McGowan, Montana Sheriff and Peace Officers
Association
02:36:19 Sheryl Wood, Montana Association of Counties, Associate
Director

Opponents' Testimony:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

02:37:13 Sen. Shockley
02:38:09 Mr. Mahoney
02:38:25 Sen. Esp
02:38:58 Sen. Jent
02:39:27 Sen. McGee
02:39:49 Sen. Jent
02:41:18 Sen. McGee
02:42:02 Randi Hood, State of Montana, Chief Public Defender
02:42:52 Mark Murphy, Yellowstone County, Chief Criminal Deputy
02:45:23 Sen. Laslovich
02:46:16 Sen. Jent

Closing by Sponsor:

02:46:58 Sen. Jent

HEARING ON SB 45

Opening Statement by Sponsor:

02:48:37 **SEN. DAN MCGEE (R), SD 29**, opened the hearing on **SB 45**,
Clarify prosecutorial disclosure requirements.

Proponents' Testimony:

02:50:02 Randi Hood, State of Montana, Chief Public Defender

Opponents' Testimony:

02:53:53 Jim Smith, Montana County Attorneys Association
02:56:24 Mark Murphy, Yellowstone County, Chief Criminal Deputy
[EXHIBIT\(jus03a06\)](#)

Informational Testimony:

03:04:46 Sheryl Wood, Montana Association of Counties, Associate
Director

Questions from Committee Members and Responses:

03:06:03 Sen. Shockley
03:07:13 Mr. Murphy
03:10:20 Sen. Shockley

03:10:28 Ms. Hood
03:13:14 Sen. Jent
03:14:50 Sen. McGee
03:16:25 Sen. Laslovich
03:16:41 Mr. Smith
03:19:04 Sen. Laslovich
03:20:12 Ms. Hood
03:23:33 Harry Freeborn, State of Montana, Public Defender
Office, Budget Office Director
03:27:04 Sen. Esp
03:27:41 Ms. Hood
03:28:44 Sen. Shockley
03:29:06 Ms. Hood
03:30:02 Sen. Shockley
03:30:14 Mr. Murphy
03:34:58 Sen. Perry
03:35:30 Sen. McGee
03:37:03 Sen. Perry
03:37:49 Ms. Hood

Closing by Sponsor:

03:40:46 Sen. McGee
03:46:49 Sen. Perry

ADJOURNMENT

Adjournment: 11:50 A.M.

PAM SCHINDLER, Secretary

ps

Additional Exhibits:

EXHIBIT ([jus03aad.pdf](#))



**Children, Families, Health, and Human Services Interim
Committee**

60th Montana Legislature

SENATE MEMBERS

CAROL JUNEAU
RICK LAIBLE
TERRY MURPHY
DAN WEINBERG

HOUSE MEMBERS

EDITH CLARK
ERNIE DUTTON
TERESA HENRY
DIANE SANDS

COMMITTEE STAFF

SUE O'CONNELL, Lead Staff
LISA JACKSON, Staff Attorney
FONG HOM, Secretary
PAT MURDO, Staff for SJR 15

SENATE JUDICIARY 4
EXHIBIT NO. _____
DATE 1/7/09
PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036
SR/LC

TO: Committee members
FROM: Lisa Mecklenberg Jackson, Staff Attorney
RE: Background for bill draft regarding friend of respondent in involuntary
commitment proceedings
DATE: August 7, 2008

As you may recall from your June 2008 CFHHS meeting, I discussed with you a recent Montana Supreme Court case, The Matter of the Mental Health of D.V., 2007 MT 351, 340 Mont. 319, 174 P.3d 503, in which D.V., arrested for family member assault after he allegedly threatened his mother, was involuntarily committed to the Montana State Hospital for 90 days. The Montana Supreme Court held that the district court erred in appointing the respondent's mother to act as his "friend" when she was also the complaining witness, an obvious conflict of interest. The court urged the legislature to amend Title 53, Chapter 21, and set forth some qualifications or criteria for appointing only unbiased and objective individuals to act as "friend" of the respondent in involuntary commitment cases. At the June meeting, the CFHHS Committee asked that a bill draft be written to address this recommendation.

A BIT OF BACKGROUND:

The friend of the respondent is defined in 53-21-102(8), MCA.

"Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

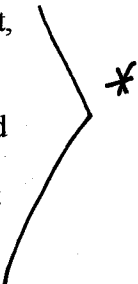
In 1979, all references to "responsible person" in Title 53, chapter 21, were amended to "friend of respondent." Under section 53-21-122, MCA, the court shall appoint someone in the role of "friend of respondent" in involuntary commitment procedures. If no family member or friend is identified or interested in serving, the court will appoint another individual to serve in this capacity, such as a representative from NAMI, or Disability Rights Montana, or even a law clerk. This person works with the respondent's attorney, often a public defender, to make sure the

respondent's rights are respected and any actions undertaken are in the respondent's best interest.

Specific Duties of the Friend of the Respondent:

- assist with legal proceedings (53-21-102(8), MCA)
- may secure attorney of own choice for the respondent (53-21-117, MCA)
- may secure professional person of own choice to examine respondent and testify at hearing (53-21-118, MCA)
- if respondent not capable of making knowing decision, friend and counsel may act together to waive respondent's rights (can't waive right to counsel or right to treatment). May also waive respondent's right to be physically present at hearing if certain conditions are met (i.e. respondent's presence at the hearing would adversely affect his or her mental condition) (53-21-119, MCA)
- friend of respondent must be notified of future legal actions involving the respondent, such as a petition for commitment by the county attorney (53-21-121(2)(f), MCA) or an extension of the respondent's commitment period (53-21-128, MCA)

Because the primary role of the friend of the respondent is to advocate for the respondent, by its very nature the role of the friend can't be "unbiased" or "objective," words the court was looking for from the legislature in its opinion. In addition, it would be virtually impossible to determine if an appointed friend is "unbiased" or "objective," which is a very subjective standard indeed. Accordingly, the attached bill draft uses the words "The friend may not be a party in the litigation involving the respondent" and "the court must change the designation of the friend if it determines that a conflict of interest exists." Hopefully, this will address the rather unusual situation of concern to the Montana Supreme Court in the Mental Health of D.V.



CI0425 8224ljha.

BUSINESS REPORT

**MONTANA SENATE
61st LEGISLATURE - REGULAR SESSION**

SENATE JUDICIARY COMMITTEE

Date: Wednesday, January 7, 2009
Place: Capitol

Time: 8:00 pm.
Room: 303

BILLS and RESOLUTIONS HEARD:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Add Postponed (PP) when appropriate:

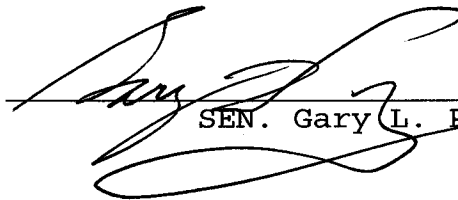
SB 1, SB 35, SB 40, SB 45

<u>SB 1</u>	<u>SB 35</u>	<u>SB 40</u>	<u>SB 45</u>
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EXECUTIVE ACTION TAKEN:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Enter P(pass) F(failed) DPAA (do pass as amended) BC(be concurred in) BCAA (be concurred in as amended):

COMMENTS:


SEN. Gary L. Perry, Chairman

MONTANA STATE SENATE
Roll Call
JUDICIARY COMMITTEE

DATE: 1/7/09

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
SENATOR GARY PERRY, CHAIRMAN	/	
SENATOR JIM SHOCKLEY, VICE CHAIRMAN	/	
SENATOR AUBYN CURTISS	/	
SENATOR JOHN ESP	/	
SENATOR GREG HINKLE	/	
SENATOR LARRY JENT	/	
SENATOR CAROL JUNEAU	/	
SENATOR CLIFF LARSEN	/	
SENATOR JESSE LASLOVICH	/	
SENATOR DANIEL MCGEE	/	
SENATOR LYNDY MOSS	/	
SENATOR TERRY MURPHY	/	

1

MONTANA STATE SENATE
Visitors Register

Judiciary Committee

Date 1/7/09Bill No. SB 35 Sponsor(s) Sen. Jent

PLEASE PRINT

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Name and Address	Representing	Support	Oppose	Inf.
Jim Smith	MT. Shaiyys Assoc	✓		
Mike Mahoney	BOC	✓		
Aimee Gmolsel	Billings Clinic	✓		
Kyla Wiens	MEIC			
Jane McMillan	MEIC			✓
Kathy McGowan	MSPDA	✓		
E. H. H. S.	DPHHS	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

#2

MONTANA STATE SENATE
Visitors Register

Judiciary Committee

Date 1/7/09Bill No. SB 40 Sponsor(s) SEN. JUNEAU

PLEASE PRINT

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Name and Address	Representing	Support	Oppose	Inf.
Mike Menzies	HD 82			✓
Aimee GRMOSEZ	Billings Clinic	✓		
LORI HAVERTY-RAMESZ	WOMAN CAUCUS	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

#3

MONTANA STATE SENATE
Visitors Register

Judiciary Committee

Date 1/7/09Bill No. SBI Sponsor(s) SEN. COONEY

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Name and Address	Representing	Support	Oppose	Inf.
LORI HAVERTY-RAMESZ	EUREKA-KALISPELL	✓		
JEFF CASILAFY	Self		✓	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE

Visitors Register

Judiciary Committee

Date 1/7/09

Bill No. SB 45 Sponsor(s) SEN. MCGEE

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[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA SENATE 61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: CHAIRMAN GARY L. PERRY, on January 9, 2009 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Gary L. Perry, Chairman (R)
Sen. Jim Shockley, Vice Chairman (R)
Sen. Aubyn Curtiss (R)
Sen. John Esp (R)
Sen. Greg Hinkle (R)
Sen. Larry Jent (D)
Sen. Carol C. Juneau (D)
Sen. Cliff Larsen (D)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Terry Murphy (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 7, SB 50, SB 91, SB 125,
1/5/2009

Executive Action: SB 40-Do Pass, SB 45-Do Pass As
Amended, SB 7-Do Pass, SB 125-Do
Pass, SB 91-Do Pass, SB 50-Tabled

HEARING ON SB 7

Opening Statement by Sponsor:

00:01:12 **SEN. JESSE LASLOVICH, (D), SD 43**, opened the hearing on **SB 7**. Code commissioner bill. (For Sen. Gebhardt who was absent.)

Proponents' Testimony:

00:02:11 Greg Petesch, Legislative Services Division

00:06:13 Sen. Shockley

Opponents Testimony:

None

Informational Testimony:

None

Opponents' Testimony:

00:08:25 Dan Shea, self, retired Supreme Court Judge
(arrived late)

Questions from Committee Members and Responses:

00:06:25 Sen. Esp

00:06:41 Sen. Shockley

00:06:45 Sen. Perry

00:07:06 Sen. Shockley

Closing by Sponsor:

00:07:31 Sen. Laslovich (for Sen. Gebhardt)

00:10:01 Sen. McGee

00:11:24 Sen. Perry

HEARING ON SB 50

Opening Statement by Sponsor:

00:12:52 **SEN. JIM SHOCKLEY (R), SD 45**, opened the hearing on **SB 50**, Revise salaries for supreme court justices and district court judges.

Proponents' Testimony:

00:15:00 Dan Shea, self

Opponents' Testimony:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

None

Closing by Sponsor:

00:16:37 Sen. Shockley

HEARING ON SB 125

Opening Statement by Sponsor:

00:17:06 **SEN. JIM SHOCKLEY (R), SD 45**, opened the hearing on **SB 125**, Clarify composition of judicial nomination commission.

Proponents' Testimony:

None

Opponents' Testimony:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

None

Closing by Sponsor:

00:18:12 Sen. Shockley

HEARING ON SB 91

Opening Statement by Sponsor:

00:18:35 SEN. CAROL JUNEAU (D) , SD 8, opened the hearing on SB 91, Revise waiver of attorney by youth.

Proponents' Testimony:

00:19:33 Nikki Zupanic, ACLU

Opponents' Testimony:

None

Informational Testimony:

00:20:04 Mark Murphy, Yellowstone County, Chief Criminal Deputy
00:22:49 Sil Robinson, Montana Board of Crime Control

Questions from Committee Members and Responses:

00:23:54 Sen. Esp
00:24:33 Sen. Juneau
00:25:27 Sen. Esp
00:26:08 Mr. Murphy

Closing by Sponsor:

00:27:24 Sen. Juneau

00:28:20 Break

EXECUTIVE ACTION ON SB 40

00:45:42 **Motion:** SEN. JUNEAU moved that **SB 40 DO PASS.**

00:46:04 **Motion:** SEN. JUNEAU moved that **SB 40 BE AMENDED.**
EXHIBIT(jus05a01)

Discussion:

00:49:13 Sen. Perry
00:49:33 Sen. Jent
00:49:46 Sen. McGee
00:52:19 Sen. Esp
00:53:59 Sen. McGee
00:55:26 Sen. Juneau
00:56:23 Sen. Jent
00:57:40 Sen. Juneau

00:58:45 **Vote:** Motion that **SB 40 BE AMENDED** failed 4-8 by roll call vote with SEN. JUNEAU, SEN. LARSEN, SEN. MOSS, and SEN. MURPHY voting aye.

00:59:39 **Motion:** SEN. MCGEE moved that **SB 40 BE AMENDED.**

Discussion:

01:00:31 Sen. Jent
01:03:46 Sen. Esp
01:04:39 Sen. Shockley
01:04:57 Sen. Larsen
01:05:31 Sen. McGee

01:08:36 **Vote:** Motion that **SB 40 BE AMENDED** failed 6-6 by roll call vote with SEN. MCGEE, SEN. CURTISS, SEN. ESP, SEN. HINKLE, SEN. SHOCKLEY and SEN. PERRY voting aye.

Discussion:

01:09:30 Sen. Jent
01:10:05 Sen. Curtiss
01:11:34 Sen. Esp

01:12:24 **Motion:** SEN. SHOCKLEY moved to **RECONSIDER THE MOTION** of **SEN. MCGEE'S AMENDMENT FOR SB 40.**

Discussion:

01:12:49 Sen. McGee

01:13:06 **Vote:** Motion to **RECONSIDER THE MOTION** on **SB 40** carried 10-2 by voice vote with SEN. JUNEAU and SEN. MOSS voting no.

Discussion:

01:13:43 Sen. McGee

01:14:48 Sen. Shockley

01:15:04 Sen. Murphy

01:15:48 Sen. Hinkle

01:16:50 Sen. Laslovich

01:17:29 Sen. Jent

01:19:01 Sen. Perry

01:21:40 **Vote:** Motion that **SB 40 BE AMENDED** failed 6-6 by roll call vote with SEN. CURTISS, SEN. ESP, SEN. HINKLE, SEN. MCGEE, SEN. PERRY, and SEN. SHOCKLEY voting aye.

01:22:34 Sen. Juneau

01:22:58 **Vote:** Motion that **SB 40 DO PASS** carried 11-1 by roll call vote with SEN. CURTISS voting no.

EXECUTIVE ACTION ON SB 45

01:23:58 **Motion:** SEN. LASLOVICH moved that **SB 45 DO PASS.**
EXHIBIT(jus05a02)

Discussion:

01:25:00 Sen. McGee

01:27:29 **Motion:** SEN. ESP moved that **SB 45 BE AMENDED.**
EXHIBIT(jus05a03)

Discussion:

01:28:53 Sen. McGee

01:29:13 Sen. Jent

01:29:33 **Vote:** Motion that **SB 45 BE AMENDED** carried unanimously by voice vote.

01:29:49 **Motion:** SEN. McGEE moved that **SB 45 DO PASS AS AMENDED.**

Discussion:

01:29:59 Sen. Jent

01:30:40 **Vote:** Motion that **SB 45 DO PASS AS AMENDED** carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 7

01:31:14 **Motion/Vote:** SEN. LASLOVICH moved that **SB 7 DO PASS.**
Motion carried unanimously by voice vote.

01:32:03 Sen. Perry

EXECUTIVE ACTION ON SB 50

01:32:57 **Motion:** SEN. SHOCKLEY moved that **SB 50 DO PASS.**

01:33:06 **Motion/Vote:** SEN. ESP moved that **SB 50 BE TABLED.**
Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 125

01:34:13 **Motion/Vote:** SEN. SHOCKLEY moved that **SB 125 DO PASS.**
Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 91

01:36:05 **Motion:** SEN. SHOCKLEY moved that **SB 91 DO PASS.**

Discussion:

01:36:19 Sen. Juneau

01:37:04 Sen. McGee

01:37:42 Valencia Lane, Legislative Services Division

01:39:52 Sen. Shockley

01:40:22 Sen. McGee

01:41:57 Sen. Jent

01:42:22 Sen. Juneau

01:42:47 **Vote:** Motion that **SB 91 DO PASS** carried unanimously by voice vote.

ADJOURNMENT

Adjournment: 9:45 A.M.

PAM SCHINDLER, Secretary

ps

Additional Exhibits:

EXHIBIT ([jus05aad.pdf](#))

Amendments to Senate Bill No. 40
1st Reading Copy

For the Senate Judiciary Committee

Prepared by Valencia Lane
January 8, 2009 (1:17pm)

1. Title, line 5.

Strike: "CLARIFYING"

Insert: "REVISING"

2. Title, line 6.

Following: "PROCEDURES;"

Insert: "REVISING REQUIREMENTS FOR THE APPOINTMENT OF A FRIEND OF
RESPONDENT;"

3. Page 4, line 2.

Following: "professional person"

Strike: "and"

Insert: ", appoint"

Following: "respondent"

Insert: "of the respondent's choice if the respondent requests
that a friend be appointed,"

4. Page 4, line 9 through line 10.

Following: "be" on line 9

Strike: remainder of line 9 through "litigation" on line 10

Insert: "an adverse party or a witness adverse to the respondent
in any pending court proceeding"

- END -

BUSINESS REPORT

**MONTANA SENATE
61st LEGISLATURE - REGULAR SESSION**

SENATE JUDICIARY COMMITTEE

Date: Friday, January 9, 2009
Place: Capitol

Time: 8:00 am
Room: 303

BILLS and RESOLUTIONS HEARD:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Add Postponed (PP) when appropriate:

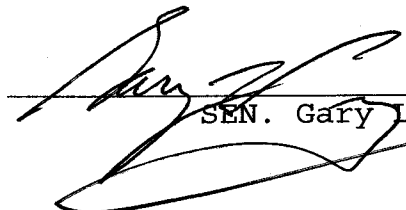
SB 7, SB 50, SB 91, SB 125

EXECUTIVE ACTION TAKEN:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Enter P(pass) F(failed) DPAA (do pass as amended) BC(be concurred in) BCAA (be concurred in as amended):

SB 40-P, SB 45-DPAA, SB 7-P, SB 125-P, SB 91-P SB 50-Tabled

COMMENTS:


SEN. Gary L. Perry, Chairman

MONTANA STATE SENATE
Roll Call
JUDICIARY COMMITTEE

DATE: 1/9/08

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
SENATOR GARY PERRY, CHAIRMAN	✓	
SENATOR JIM SHOCKLEY, VICE CHAIRMAN	✓	
SENATOR AUBYN CURTISS	✓	
SENATOR JOHN ESP	✓	
SENATOR GREG HINKLE	✓	
SENATOR LARRY JENT	✓	
SENATOR CAROL JUNEAU	✓	
SENATOR CLIFF LARSEN	✓	
SENATOR JESSE LASLOVICH	✓	
SENATOR DANIEL MCGEE	✓	
SENATOR LYNDY MOSS	✓	
SENATOR TERRY MURPHY	✓	



SENATE STANDING COMMITTEE REPORT

January 9, 2009

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 40** (first reading copy -- white) **do pass.**

Signed: _____

Senator Gary L. Perry, Chair

- END -

Committee Vote:

Yes 11, No 1

Fiscal Note Required ☐

SB0040001SC.sdr

SA



SENATE STANDING COMMITTEE REPORT

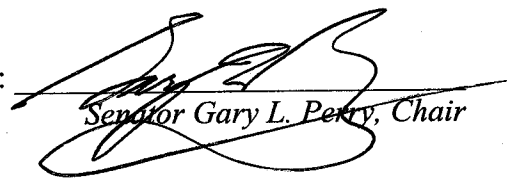
January 9, 2009

Page 1 of 2

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 45** (first reading copy -- white) **do pass as amended.**

Signed:


Senator Gary L. Perry, Chair

And, that such amendments read:

1. Page 1, line 12.

Following: "(1)"

Insert: "(a)"

2. Page 1, line 12 through line 13.

Following: "~~request~~," on line 12

Strike: remainder of line 12 through "indigent" on line 13

Insert: "Upon request"

3. Page 1, line 14.

Following: "reproduction"

Strike: ", without cost to the defendant,"

4. Page 1, line 16.

Strike: "(a)"

Insert: "(i)"

5. Page 1, line 18.

Strike: "(b)"

Insert: "(ii)"

6. Page 1, line 19.

Strike: "(c)"

Insert: "(iii)"

7. Page 1, line 22.

Committee Vote:

Yes 12, No 0

Fiscal Note Required ☐

SB0045001SC.sdr

SA

Strike: "(d)"

Insert: "(iv)"

8. Page 1, line 24.

Strike: "(e)"

Insert: "(v)"

9. Page 1, line 26.

Following: line 25

Insert: "(b) When, pursuant to 47-1-111, a defendant has been determined by the office of state public defender to be indigent, the prosecutor shall, without cost to the defendant or to the office of state public defender, make available the material and information required under subsection (1)(a)."

- END -



SENATE STANDING COMMITTEE REPORT

January 9, 2009

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 7** (first reading copy -- white) do pass.

Signed: _____

Senator Gary L. Perry, Chair

- END -

Committee Vote:

Yes 12, No 0

Fiscal Note Required ☐

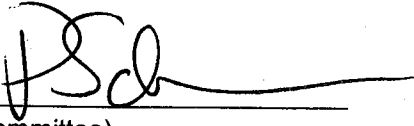
SB0007001SC.sdr

SA

SENATE Secretary of the Senate COPY

TABLED BILL

The **SENATE JUDICIARY COMMITTEE** TABLED SB 50, by motion, on **Friday, January 9, 2009.**



(For the Committee)



(Secretary of the Senate)

10:20 , 1/9

(Time)

(Date)

January 9, 2009

Pamela E. Schindler, Secretary

Phone: 444-4891



SENATE STANDING COMMITTEE REPORT

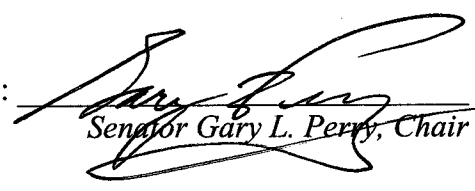
January 9, 2009

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 125** (first reading copy -- white) do pass.

Signed:


Senator Gary L. Perry, Chair

- END -

Committee Vote:

Yes 12, No 0

Fiscal Note Required ☐

SB0125001SC.sdr

SA



SENATE STANDING COMMITTEE REPORT

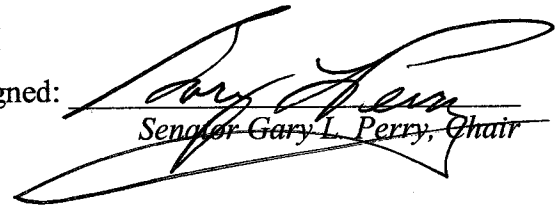
January 9, 2009

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 91** (first reading copy -- white) **do pass.**

Signed:


Senator Gary L. Perry, Chair

- END -

Committee Vote:

Yes 12, No 0

Fiscal Note Required ☐

SB0091001SC.sdr

SP

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/9/09 BILL NO. ^{SB}40 MOTION NO. 1
MOTION: amendment

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR DANIEL MCGEE		1	
SENATOR JESSE LASLOVICH		1	
SENATOR AUBYN CURTISS		1	
SENATOR LARRY JENT		1	
SENATOR TERRY MURPHY	1		
SENATOR LYNDA MOSS	1		
SENATOR JOHN ESP		1	
SENATOR CLIFF LARSEN	1		
SENATOR CAROL JUNEAU	1		
SENATOR GREG HINKLE		1	
SENATOR JIM SHOCKLEY, VICE CHAIR		1	
SENATOR GARY PERRY, CHAIRMAN		1	

4 / 8 failed

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/9/09 BILL NO. SB340 MOTION NO. 2
MOTION: Conceptual Amend - McFee

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR DANIEL MCGEE	✓		
SENATOR JESSE LASLOVICH		✓	
SENATOR AUBYN CURTISS	✓		
SENATOR LARRY JENT		✓	
SENATOR TERRY MURPHY		✓	
SENATOR LYNDA MOSS		✓	
SENATOR JOHN ESP	✓		
SENATOR CLIFF LARSEN		✓	
SENATOR CAROL JUNEAU		✓	
SENATOR GREG HINKLE	✓		
SENATOR JIM SHOCKLEY, VICE CHAIR	✓		
SENATOR GARY PERRY, CHAIRMAN	✓		

6/6 *faulk*

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/9/09 BILL NO. SB40 MOTION NO. 4
MOTION: _____

Mr. Lee Amend (2nd time)

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR DANIEL MCGEE	☒	☐	
SENATOR JESSE LASLOVICH	☐	☒	
SENATOR AUBYN CURTISS	☒	☐	
SENATOR LARRY JENT	☐	☒	
SENATOR TERRY MURPHY	☐	☒	
SENATOR LYNDA MOSS	☐	☒	
SENATOR JOHN ESP	☒	☐	
SENATOR CLIFF LARSEN	☐	☒	
SENATOR CAROL JUNEAU	☐	☒	
SENATOR GREG HINKLE	☒	☐	
SENATOR JIM SHOCKLEY, VICE CHAIR	☒	☐	
SENATOR GARY PERRY, CHAIRMAN	☒	☐	

6/6/09

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/9/09 BILL NO SB 40 MOTION NO. 5
 MOTION: _____

SB 40 Do Pass

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR DANIEL MCGEE	<u>1</u>		
SENATOR JESSE LASLOVICH	<u>1</u>		
SENATOR AUBYN CURTISS		<u>1</u>	
SENATOR LARRY JENT	<u>1</u>		
SENATOR TERRY MURPHY	<u>1</u>		
SENATOR LYNDA MOSS	<u>1</u>		
SENATOR JOHN ESP	<u>1</u>		
SENATOR CLIFF LARSEN	<u>1</u>		
SENATOR CAROL JUNEAU	<u>1</u>		
SENATOR GREG HINKLE	<u>1</u>		
SENATOR JIM SHOCKLEY, VICE CHAIR	<u>1</u>		
SENATOR GARY PERRY, CHAIRMAN	<u>1</u>		

11/1

MONTANA STATE SENATE
Visitors Register

Judiciary Committee

Date 1/9/08

Bill No. SB7 Sponsor(s) Sen. Schacht

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Name and Address	Representing	Support	Oppose	Inf.
Greg Petesch	Code Commissioner	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

Judiciary Committee

Date 1/9/08

Bill No. SB 50 Sponsor(s) Sen. Shockley

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Name and Address	Representing	Support	Oppose	Inf.
Peggy Davis	DOA-SHRD			✓
Dan Shea	Self		Oppose	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

Judiciary Committee

Date 1/9/08

Bill No. SB91 Sponsor(s) Sen. Jensen / Shockley

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Name and Address	Representing	Support	Oppose	Inf.
MARK MURPHY YCAO	YCAO			X
Cl Robinson	MBCC			X
Niki Zupanic	ACLU	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

Judiciary Committee

Date 1/9/08

Bill No. SB125 **Sponsor(s)** Sen. Shockley

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Name and Address	Representing	Support	Oppose	Inf.

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chairman Ron Stoker, on January 30, 2009 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Ron Stoker, Chairman (R)
Rep. Deborah Kottel, Vice Chairman (D)
Rep. Ken Peterson, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Gerald Bennett (R)
Rep. Anders Blewett (D)
Rep. Robyn Driscoll (D)
Rep. Bob Ebinger (D)
Rep. David Howard (R)
Rep. Krayton Kerns (R)
Rep. Margaret MacDonald (D)
Rep. Edith (Edie) McClafferty (D)
Rep. Mike Menahan (D)
Rep. Michael More (R)
Rep. Keith Regier (R)
Rep. Diane Sands (D)
Rep. Bob Wagner (R)
Rep. Wendy Warburton (R)

Members Excused: None

Members Absent: None

Staff Present: Jennifer Eck, Committee Secretary
David Niss, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 40, 1/21/2009; SB 91, 1/21/2009

Executive Action: HB 176, HB 228

00:00:37 Rep. Driscoll

HEARING ON SB 91

Opening Statement by Sponsor:

00:01:12 Sen. Carol Juneau (D), SD 8, opened the hearing on
SB 91, Revise waiver of attorney by youth.

[**EXHIBIT\(juh22a01\)**](#)

00:03:45 Chairman Stoker

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

00:04:41 Rep. Menahan
00:04:48 Chairman Stoker
00:04:58 Mark Murphy, Chief Criminal Deputy, Yellowstone
Attorney's Office
00:05:09 Rep. Menahan
00:05:39 Mr. Murphy
00:09:04 Rep. Peterson
00:10:04 Mr. Murphy
00:11:13 Rep. Peterson
00:11:13 Chairman Stoker
00:11:17 Rep. Howard
00:11:27 Mr. Murphy
00:12:28 Rep. Howard
00:12:29 Chairman Stoker
00:12:33 Rep. Warburton
00:12:51 Sen. Juneau
00:14:11 Rep. Kottel
00:14:51 Sen. Juneau
00:16:20 Rep. Kottel
00:17:03 Sen. Juneau
00:17:46 Rep. Kottel
00:17:48 Chairman Stoker
00:17:52 Rep. Menahan
00:18:15 Sen. Juneau
00:18:20 Chairman Stoker
00:18:23 Rep. Menahan
00:19:00 Sen. Juneau
00:19:09 Chairman Stoker

Closing by Sponsor:

00:19:30 Sen. Juneau
00:19:53 Chairman Stoker

HEARING ON SB 40

Opening Statement by Sponsor:

00:20:06 Sen. Carol Juneau (D), SD 8, opened the hearing on
SB 40, Clarify friend of respondent in involuntary
commitment laws.

00:23:24 Chairman Stoker

Proponents' Testimony:

00:23:49 Rep. Menahan
00:27:12 Chairman Stoker
00:27:18 Beth Brenneman, Disability Rights Montana
00:29:52 Chairman Stoker

Opponents' Testimony: None

Informational Testimony:

00:30:21 Russell Cater, Department of Health and Human Services
00:31:45 Chairman Stoker
00:31:48 Mr. Cater
[EXHIBIT\(juh22a02\)](#)
00:32:28 Chairman Stoker

Questions from Committee Members and Responses:

00:32:44 Rep. Kerns
00:32:53 Sen. Juneau
00:32:53 Rep. Kerns
00:33:06 Sen. Juneau
00:33:14 Rep. Kerns
00:33:21 Sen. Juneau
00:33:51 Rep. Kerns
00:34:05 Rep. Peterson
00:35:00 Mr. Cater
00:35:35 Rep. Peterson
00:35:53 Mr. Cater
00:36:44 Rep. Peterson
00:36:45 Chairman Stoker
00:36:49 Rep. Sands
00:37:01 Mr. Cater

00:37:59 Rep. Sands
00:38:35 Sen. Juneau
EXHIBIT(juh22a03)
00:41:54 Rep. Sands
00:42:13 Rep. Menahan
00:43:58 Chairman Stoker
00:43:59 Rep. MacDonald
00:44:47 Sen. Juneau
00:46:22 Chairman Stoker
00:46:26 Rep. Becker
00:46:42 Chairman Stoker
00:46:44 Rep. Becker
00:47:41 Mr. Cater
00:48:39 Rep. Becker
00:48:57 Rep. Menahan

Closing by Sponsor:

00:50:37 Sen. Juneau
00:51:19 Chairman Stoker
00:51:43 Mr. Niss
00:54:56 Chairman Stoker

00:54:58 Recess
01:16:07 Reconvene
01:16:08 Chairman Stoker

EXECUTIVE ACTION ON HB 228

01:16:16 **Motion:** Rep. Peterson moved that **HB 228 DO PASS.**
EXHIBIT(juh22a04)

Discussion:

01:16:27 **Motion:** Rep. Kerns moved that **HB 228 BE AMENDED.**

Discussion:

01:17:36 Chairman Stoker
01:17:51 Rep. Kerns
01:18:28 Rep. Kerns called the question.
01:18:50 Chairman Stoker
01:19:23 Mr. Niss
01:20:13 Chairman Stoker
01:20:20 Rep. Kerns
01:20:22 Chairman Stoker

01:20:26 **Vote:** Motion that **HB 228 BE AMENDED** carried
unanimously by roll call vote.

01:21:27 **Motion:** Rep. Peterson moved that **HB 228 DO PASS AS AMENDED.**

01:21:33 **Motion:** Rep. Kottel moved that **HB 228 BE AMENDED.**
EXHIBIT(juh22a05)

Discussion:

01:22:02 Rep. Kottel
01:23:18 Rep. Kerns
01:23:23 Rep. Peterson
01:24:04 Chairman Stoker
01:24:15 Rep. Peterson
01:24:35 Rep. Howard
01:25:01 Chairman Stoker
01:25:06 Rep. Kottel
01:26:08 Rep. Peterson
01:26:39 Rep. Regier
01:26:57 Rep. Kottel
01:27:38 Rep. Warburton
01:28:17 Rep. Kerns
01:28:51 Rep. Peterson
01:29:35 Mr. Niss
01:30:18 Rep. Howard
01:30:57 Chairman Stoker
01:31:04 Rep. Menahan
01:31:38 Chairman Stoker
01:31:46 Rep. Howard
01:31:51 Rep. Menahan
01:32:37 Rep. Peterson
01:33:10 Rep. Kerns called the question.

01:33:14 **Vote:** Motion that **HB 228 BE AMENDED** carried 11-7 by roll call vote with Rep. Sands, Rep. MacDonald, Rep. Ebinger, Rep. Becker, Rep. Driscoll, Rep. Blewett, and Rep. Menahan voting no.

01:35:27 **Motion:** Rep. Peterson moved that **HB 228 DO PASS AS AMENDED.**

01:35:42 Chairman Stoker

01:35:46 **Motion:** Rep. Kerns moved that **HB 228 BE AMENDED.**

Discussion:

01:36:06 Chairman Stoker
01:36:36 Mr. Niss
01:37:55 Chairman Stoker

01:38:13 Rep. Peterson
 01:38:25 Chairman Stoker
 01:38:38 Rep. Kerns called the question.

 01:38:51 **Vote:** Motion that **HB 228 BE AMENDED** carried
 unanimously by voice vote.

 01:39:03 **Motion:** Rep. Peterson moved that **HB 228 DO PASS AS
 AMENDED.**

 01:39:16 **Motion:** Rep. Blewett moved that **HB 228 BE AMENDED.**

Discussion:

01:40:25 Chairman Stoker
 01:40:40 Rep. Blewett
 01:41:58 Chairman Stoker
 01:42:07 Rep. Kottel
 01:45:35 Chairman Stoker
 01:45:37 Rep. Sands
 01:46:10 Chairman Stoker
 01:46:22 Rep. Menahan
 01:47:10 Rep. Sands
 01:47:35 Rep. Menahan
 01:49:12 Rep. Howard
 01:49:37 Rep. Kottel
 01:49:39 Rep. Howard
 01:50:03 Rep. Menahan
 01:50:11 Rep. Howard
 01:50:12 Chairman Stoker
 01:50:24 Rep. Menahan
 01:55:02 Rep. Peterson called the question.
 01:55:09 Rep. MacDonald
 01:55:15 Rep. Menahan
 01:55:16 Rep. MacDonald
 01:56:32 Rep. Menahan
 01:56:35 Rep. Sands exited meeting.
 01:58:26 Rep. Peterson called the question.
 01:58:36 Chairman Stoker
 01:58:40 Rep. Blewett
 01:59:21 Chairman Stoker

 01:59:45 **Vote:** Motion that **HB 228 BE AMENDED** failed 8-10 by
 roll call vote with Rep. MacDonald, Rep.
 Ebinger, Rep. Becker, Rep. Driscoll, Rep. McClafferty,
 Rep. Blewett, Rep. Sands, and Rep. Menahan voting aye.
 Rep. Sands voted by proxy.

02:01:02 **Motion:** Rep. Peterson moved that **HB 228 DO PASS AS AMENDED.**

Discussion:

02:01:17 Chairman Stoker

02:01:22 Rep. Wagner

02:02:17 Rep. Peterson called the question.

02:02:23 **Vote:** Motion that **HB 228 DO PASS AS AMENDED** carried 10-8 by roll call vote with Rep. MacDonald, Rep. Ebinger, Rep. Becker, Rep. Driscoll, Rep. McClafferty, Rep. Blewett, Rep. Menahan, and Rep. Sands voting no. Rep. Sands voted by proxy.

02:03:39 Chairman Stoker

EXECUTIVE ACTION ON HB 176

02:04:00 **Motion:** Rep. Kottel moved that **HB 176 DO PASS.**

Discussion:

02:04:01 Chairman Stoker

02:04:13 Rep. Kottel

02:07:01 Chairman Stoker

02:07:34 Rep. Peterson

02:07:40 Rep. Kottel

02:07:57 **Motion:** Rep. Peterson moved that **A COMMITTEE BILL BE ADOPTED.**

Discussion:

02:08:03 Chairman Stoker

02:08:15 Rep. MacDonald exited meeting.

02:08:20 Rep. Menahan

02:08:38 Chairman Stoker

02:08:44 Rep. Menahan

02:09:49 Chairman Stoker

02:09:58 **Substitute Motion:** Rep. Peterson made a substitute motion that **HB 176 BE TABLED.**

02:10:44 **Vote:** Substitute motion that **HB 176 BE TABLED** carried 13-5 by voice vote with Rep. Becker, Rep. Wagner, Rep. Sands, Rep. MacDonald, and Rep. Kottel voting no. Rep. Sands and Rep. MacDonald voted by proxy.

02:12:49 Chairman Stoker

ADJOURNMENT

02:14:11 Adjournment

JENNIFER ECK, Secretary

je

Additional Documents:

EXHIBIT ([juh22aad.pdf](#))

Amendment to Senate Bill No. 40
As passed by Senate
Amendment Requested by the Department of Public
Health and Human Services
For the House Judiciary Committee

1. Title, Page 1, line 6

Following: "procedures;"

Insert: "requiring consultation with and consent of the respondent prior to appointment of a friend of respondent;"

2. Page 4, line 2.

Following: "shall"

Insert: "(i)"

3. Page 4, line 2.

Following: "professional person"

Strike: "and"

Insert: "; (ii) inquire of all persons present at the hearing, including the respondent and the respondent's counsel, as to the availability of any person to serve as friend of respondent, including a person mentioned in the petition, and if an appropriate person is available to serve and the respondent or the respondent's counsel consents, appoint"

4. Page 4, line 2.

Following: "respondent"

Strike: "and"

Insert: "; and (iii)"

5. Page 4, line 12.

Following: "friend of respondent"

Insert: "at the request of the respondent or"

-End-

On 12/30/2008, the Montana Supreme Court invalidated two mental health commitments solely because the district court failed to appoint a friend of respondent, although the Court recognized that in many cases there may be no one available to serve. In 2007, the Court invalidated a commitment because the appointed friend had a conflict of interest and the respondent objected. This amendment requires the district court to consult with and obtain consent of the respondent prior to appointing a friend of respondent.

Prepared by:

Department of Public Health and Human Services

Paulette Kohman

Special Assistant Attorney General

444-1258

January 30, 2009



**Children, Families, Health, and Human Services Interim
Committee**

60th Montana Legislature

SENATE MEMBERS

CAROL JUNEAU
RICK LAIBLE
TERRY MURPHY
DAN WEINBERG

HOUSE MEMBERS

EDITH CLARK
ERNIE DUTTON
TERESA HENRY
DIANE SANDS

COMMITTEE STAFF

SUE O'CONNELL, Lead Staff
LISA JACKSON, Staff Attorney
FONG HOM, Secretary
PAT MURDO, Staff for SJR 15

EXHIBIT 3
DATE 1/30/2009
SB SB 40

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

TO: Committee members
FROM: Lisa Mecklenberg Jackson, Staff Attorney
RE: Background for bill draft regarding friend of respondent in involuntary
commitment proceedings
DATE: August 7, 2008

As you may recall from your June 2008 CFHHS meeting, I discussed with you a recent Montana Supreme Court case, The Matter of the Mental Health of D.V., 2007 MT 351, 340 Mont. 319, 174 P.3d 503, in which D.V., arrested for family member assault after he allegedly threatened his mother, was involuntarily committed to the Montana State Hospital for 90 days. The Montana Supreme Court held that the district court erred in appointing the respondent's mother to act as his "friend" when she was also the complaining witness, an obvious conflict of interest. The court urged the legislature to amend Title 53, Chapter 21, and set forth some qualifications or criteria for appointing only unbiased and objective individuals to act as "friend" of the respondent in involuntary commitment cases. At the June meeting, the CFHHS Committee asked that a bill draft be written to address this recommendation.

A BIT OF BACKGROUND:

The friend of the respondent is defined in 53-21-102(8), MCA.

"Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

In 1979, all references to "responsible person" in Title 53, chapter 21, were amended to "friend of respondent." Under section 53-21-122, MCA, the court shall appoint someone in the role of "friend of respondent" in involuntary commitment procedures. If no family member or friend is identified or interested in serving, the court will appoint another individual to serve in this capacity, such as a representative from NAMI, or Disability Rights Montana, or even a law clerk. This person works with the respondent's attorney, often a public defender, to make sure the

respondent's rights are respected and any actions undertaken are in the respondent's best interest.

Specific Duties of the Friend of the Respondent:

- assist with legal proceedings (53-21-102(8), MCA)
- may secure attorney of own choice for the respondent (53-21-117, MCA)
- may secure professional person of own choice to examine respondent and testify at hearing (53-21-118, MCA)
- if respondent not capable of making knowing decision, friend and counsel may act together to waive respondent's rights (can't waive right to counsel or right to treatment). May also waive respondent's right to be physically present at hearing if certain conditions are met (i.e. respondent's presence at the hearing would adversely affect his or her mental condition) (53-21-119, MCA)
- friend of respondent must be notified of future legal actions involving the respondent, such as a petition for commitment by the county attorney (53-21-121(2)(f), MCA) or an extension of the respondent's commitment period (53-21-128, MCA)

Because the primary role of the friend of the respondent is to advocate for the respondent, by its very nature the role of the friend can't be "unbiased" or "objective," words the court was looking for from the legislature in its opinion. In addition, it would be virtually impossible to determine if an appointed friend is "unbiased" or "objective," which is a very subjective standard indeed. Accordingly, the attached bill draft uses the words "The friend may not be a party in the litigation involving the respondent" and "the court must change the designation of the friend if it determines that a conflict of interest exists." Hopefully, this will address the rather unusual situation of concern to the Montana Supreme Court in the Mental Health of D.V.

CI0425 8224ljha.

BUSINESS REPORT

**MONTANA HOUSE OF REPRESENTATIVES
61st LEGISLATURE - REGULAR SESSION**

HOUSE JUDICIARY COMMITTEE

Date: Friday, January 30, 2009
Place: Capitol

Time: 8:00 am
Room: 137

BILLS and RESOLUTIONS HEARD:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Add Postponed (PP) when appropriate:

SB 40, SB 91

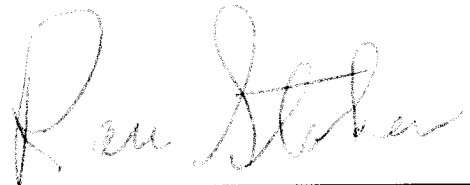
EXECUTIVE ACTION TAKEN:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Enter P(pass) F(failed) DPAA (do pass as amended) BC(be concurred in) BCAA (be concurred in as amended):

HB 228 (Do pass as thrice amended)

HB 176 (Tabled)

COMMENTS:



REP. Ron Stoker, Chairman

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE: 1/30/09

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
Rep. Peterson	X	
Rep. Kottel	X	
Rep. Kerns	X	
Rep. Sands	X	
Rep. Bennett	X	
Rep. MacDonald	X	
Rep. More	X	
Rep. Ebinger	X	
Rep. Wagner	X	
Rep. Becker	X	
Rep. Driscoll	X	
Rep. Regier	X	
Rep. McClafferty	X	
Rep. Howard	X	
Rep. Blewett	X	
Rep. Warburton	X	
Rep. Menahan	X	
Rep. Stoker	X	



HOUSE STANDING COMMITTEE REPORT

January 30, 2009

Page 1 of 2

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 228** (first reading copy – white) **do pass as amended.**

Signed: _____

Ron Stoker
Representative Ron Stoker, Chair

And, that such amendments read:

1. Page 1, line 21.

Strike: "5"

Insert: "4"

2. Page 1, line 29.

Following: "firearm"

Insert: "to a person other than an identified peace officer"

3. Page 2, lines 17 through page 3, line 24.

Strike: sections 5 and 6 in their entirety

Renumber: subsequent sections

4. Page 4, lines 7 through 15.

Strike: section 9 in its entirety

Renumber: subsequent sections

5. Page 5, line 17.

Strike: "5"

Insert: "4"

6. Page 5, line 19.

Committee Vote:

Yes 10, No 8

Fiscal Note Required ☐

HB0228001SC.hjd

Strike: "5"
Insert: "4"

7. Page 5, lines 20 and 21.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections

8. Page 5, line 22.
Strike: "7"
Insert: "5"

9. Page 5, line 23.
Strike: "7"
Insert: "5"

10. Page 5, line 24.
Strike: "8"
Insert: "6"

11. Page 5, line 25.
Strike: "8"
Insert: "6"

12. Page 5, lines 26 and 27.
Strike: subsection (5) in its entirety

- END -

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/30/09 BILL NO HB 228 MOTION NO. _____
 MOTION: _____

DO PASS Amendment HB 022802.adn
(Rep. Kerns)

<u>NAME</u>	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
Ken Peterson	X		
Deborah Kottel	X		
Krayton Kerns	X		
Diane Sands	X		
Gerald Bennett	X		
Margaret MacDonald	X		
Michael More	X		
Bob Ebinger	X		
Bob Wagner	X		
Arlene Becker	X		
Robyn Driscoll	X		
Keith Regier	X		
Edith McClafferty	X		
David Howard	X		
Anders Blewett	X		
Wendy Warburton	X		
Mike Menahan	X		
Ron Stoker	X		

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/30/09 BILL NO. HB 228 MOTION NO. _____
 MOTION: _____

*Conceptual amendment on HB 228
 (HB 022803.adn) (Rep. Kottel)*

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
Ken Peterson	X		
Deborah Kottel	X		
Krayton Kerns	X		
Diane Sands		X	
Gerald Bennett	X		
Margaret MacDonald		X	
Michael More	X		
Bob Ebinger		X	
Bob Wagner	X		
Arlene Becker		X	
Robyn Driscoll		X	
Keith Regier	X		
Edith McClafferty	X		
David Howard	X		
Anders Blewett		X	
Wendy Warburton	X		
Mike Menahan		X	
Ron Stoker	X		

11 7

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/30/09 BILL NO HB 228 MOTION NO. _____
 MOTION: _____

Do PASS Conceptual amendment to strike lines
18 & 19 on page 1 of HB 228 -
(Rep. Blewett)

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
Ken Peterson		X	
Deborah Kottel		X	
Krayton Kerns		X	
Diane Sands	X		X
Gerald Bennett		X	
Margaret MacDonald	X		
Michael More		X	
Bob Ebinger	X		
Bob Wagner		X	
Arlene Becker	X		
Robyn Driscoll	X		
Keith Regier		X	
Edith McClafferty	X		
David Howard		X	
Anders Blewett	X		
Wendy Warburton		X	
Mike Menahan	X		
Ron Stoker		X	

8 10

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/30/09 BILL NO HB 228 MOTION NO. _____
 MOTION: _____

DO PASS HB 228 as three times
amended.

<u>NAME</u>	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
Ken Peterson	X		
Deborah Kottel	X		
Krayton Kerns	X		
Diane Sands		X	X
Gerald Bennett	X		
Margaret MacDonald		X	
Michael More	X		
Bob Ebinger		X	
Bob Wagner	X		
Arlene Becker		X	
Robyn Driscoll		X	
Keith Regier	X		
Edith McClafferty		X	
David Howard	X		
Anders Blewett		X	
Wendy Warburton	X		
Mike Menahan		X	
Ron Stoker	X		

10 0

AUTHORIZED COMMITTEE PROXY

I request to be excused from the Tuesday Committee

Committee because of other commitments. I desire to leave my proxy vote with:

Deb Kallu

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT AYE NO

HB 228		
3rd Amendment	X	
on Bill →		X
HB 176 Table		X

BILL/AMENDMENT AYE NO

Rep. Chris Jones
(Signature)

Date 1-30-09

**AUTHORIZED
COMMITTEE PROXY**

I request to be excused from the Lucy Carden

Committee because of other commitments. I desire to leave my proxy vote with:

Deb Kaur

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT

AYE NO

HB 176		
Tolson	X	

BILL/AMENDMENT

AYE NO

Rep.

Margaret E. Mackinnon
(Signature)

Date 1-7-09

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chairman Ron Stoker, on March 4, 2009 at 8:02
A.M., in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Ron Stoker, Chairman (R)
Rep. Deborah Kottel, Vice Chairman (D)
Rep. Ken Peterson, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Gerald Bennett (R)
Rep. Anders Blewett (D)
Rep. Robyn Driscoll (D)
Rep. Bob Ebinger (D)
Rep. David Howard (R)
Rep. Krayton Kerns (R)
Rep. Margaret MacDonald (D)
Rep. Edith (Edie) McClafferty (D)
Rep. Mike Menahan (D)
Rep. Michael More (R)
Rep. Keith Regier (R)
Rep. Diane Sands (D)
Rep. Bob Wagner (R)
Rep. Wendy Warburton (R)

Members Excused: None

Members Absent: None

Staff Present: Jennifer Eck, Committee Secretary
David Niss, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: HB 525, 2/25/2009; SB 45,
2/25/2009; SB 140, 2/25/2009

Executive Action: SB 140, SB 35, SB 40, SB 45

HEARING ON SB 140

Opening Statement by Sponsor:

00:01:36 Sen. Gary Perry (R), SD 35, opened the hearing on SB 140, Remove termination of domestic violence fatality review commission.

Proponents' Testimony:

00:03:25 Ali Bovington, Attorney General's Office

[EXHIBIT\(juh48a01\)](#)

[EXHIBIT\(juh48a02\)](#)

00:06:21 Matthew Dale, Attorney General's Office

00:10:42 Eve Franklin, Policy Advisor on Families Governor Schweitzer's Office

00:12:18 Judy Reel, Montana Coalition Against Domestic and Sexual Violence

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

00:13:22 Rep. Sands

00:13:35 Mr. Dale

00:13:37 Rep. Sands

00:14:41 Mr. Dale

00:16:29 Rep. Sands

00:16:35 Ms. Franklin

00:16:36 Rep. Sands

00:17:08 Ms. Franklin

00:17:45 Rep. Bennett

00:18:00 Mr. Dale

00:18:01 Rep. Bennett

00:18:27 Mr. Dale

00:18:47 Rep. Bennett

00:18:50 Rep. Kerns

00:19:00 Mr. Dale

00:19:07 Rep. Kerns

00:19:15 Mr. Dale

00:20:01 Chairman Stoker

00:20:18 Rep. Howard

00:20:23 Mr. Dale

00:20:31 Rep. Howard

00:21:10 Mr. Dale

00:22:12 Rep. Howard

00:22:34 Mr. Dale

00:23:50 Rep. Howard
00:23:51 Rep. MacDonald
00:23:56 Chairman Stoker
00:24:20 Rep. MacDonald
00:24:36 Mr. Dale
00:24:56 Rep. Wagner
00:25:49 Mr. Dale
00:26:52 Rep. Wagner
00:26:55 Rep. Peterson
00:27:22 Mr. Dale
00:28:04 Rep. Peterson
00:28:09 Rep. McClafferty
00:28:44 Mr. Dale
00:30:23 Chairman Stoker
00:30:26 Rep. Regier
00:30:33 Sen. Perry
00:30:35 Rep. Regier
00:30:51 Sen. Perry
00:31:04 Chairman Stoker

Closing by Sponsor:

00:31:30 Sen. Perry
00:31:40 Chairman Stoker

HEARING ON SB 45

Opening Statement by Sponsor:

00:32:01 Sen. Dan McGee (R), SD 29, opened the hearing on SB 45,
Clarify prosecutorial disclosure requirements.

Proponents' Testimony:

00:40:27 Randi Hood, Chief Public Defender

Opponents' Testimony:

00:45:08 Leo Gallagher, Lewis and Clark County; Montana
County Attorneys Association
00:55:29 Jim Smith, Montana County Attorneys Association
00:58:05 David Carter, Deputy Yellowstone County Attorney
01:01:37 Sheryl Wood, Montana Association of Counties

Informational Testimony: None

Questions from Committee Members and Responses:

01:04:11 Rep. Wagner
01:05:00 Ms. Hood
01:05:52 Rep. Wagner
01:06:30 Ms. Hood
01:06:59 Rep. Wagner
01:07:26 Ms. Hood
01:08:04 Rep. Wagner
01:08:07 Rep. Kottel
01:08:31 Ms. Hood
01:08:36 Rep. Kottel
01:08:55 Ms. Hood
01:09:02 Rep. Kottel
01:09:32 Ms. Hood
01:10:16 Rep. Kottel
01:10:18 Rep. Peterson
01:10:25 Sen. McGee
01:10:26 Rep. Peterson
01:11:34 Sen. McGee
01:13:32 Rep. Peterson
01:14:15 Mr. Carter
01:14:38 Rep. Peterson
01:14:50 Rep. Wagner
01:14:58 Sen. McGee
01:14:58 Rep. Wagner
01:15:25 Sen. McGee
01:17:35 Rep. Wagner
01:18:05 Sen. McGee
01:19:42 Rep. Wagner
01:19:45 Rep. Blewett exited the meeting.

Closing by Sponsor:

01:20:08 Sen. McGee

01:21:17 Chairman Stoker
01:21:30 Rep. Kottel exited the meeting.
01:21:38 Recess
01:45:21 Reconvene

HEARING ON HB 525**Opening Statement by Sponsor:**

01:46:15 Rep. Robyn Driscoll (D), HD 51, opened the hearing on
HB 525, Revise penalty for eluding peace officer.

Proponents' Testimony:

01:48:34 David Carter, Yellowstone County Attorney's Office;
Montana County Attorneys Association
01:55:38 Jim Smith, Montana Sheriffs and Peace Officers
Association; Montana Association of Counties

Opponents' Testimony: None

Informational Testimony:

01:58:31 Randi Hood, Chief Public Defender

Questions from Committee Members and Responses:

01:58:57 Rep. Warburton
01:59:18 Mr. Carter
01:59:19 Rep. Warburton
01:59:29 Mr. Carter
01:59:51 Rep. Warburton
01:59:59 Mr. Carter
02:00:11 Rep. Warburton
02:00:44 Mr. Carter
02:04:39 Rep. Warburton
02:05:07 Mr. Carter
02:06:05 Rep. Wagner
02:06:25 Mr. Carter
02:07:20 Rep. Wagner
02:07:56 Mr. Carter
02:08:28 Rep. Wagner
02:09:39 Mr. Carter
02:12:20 Rep. Wagner
02:13:37 Chairman Stoker
02:13:41 Mr. Carter
02:16:22 Rep. Howard
02:17:35 Mr. Carter
02:21:23 Rep. Howard
02:21:24 Chairman Stoker
02:21:32 Mr. Carter
02:21:43 Rep. Warburton
02:22:31 Chairman Stoker
02:22:32 Rep. Warburton
02:23:43 Ms. Hood
02:25:00 Rep. More
02:26:29 Mr. Carter

Closing by Sponsor:

02:29:23 Rep. Driscoll

02:30:07 Chairman Stoker

EXECUTIVE ACTION ON SB 140

02:32:00 **Motion:** Rep. Peterson moved that **SB 140 BE CONCURRED IN.**

Discussion:

02:32:05 Chairman Stoker

02:32:21 Rep. Howard

02:33:01 Rep. Warburton

02:33:30 Rep. Sands

02:34:58 Rep. MacDonald

02:36:28 Rep. Wagner

02:37:07 Mr. Niss

02:37:42 Rep. Wagner

02:37:45 Rep. Menahan

02:41:04 Rep. Peterson

02:41:44 Chairman Stoker

02:42:12 Rep. Sands

02:42:22 Rep. Kerns called the question.

02:42:26 **Vote:** Motion carried 11-7 by roll call vote with Rep. Peterson, Rep. Kerns, Rep. Bennett, Rep. More, Rep. Wagner, Rep. Regier, and Rep. Howard voting no. Rep. Kottel and Rep. Blewett voted by proxy.

02:43:24 Chairman Stoker

EXECUTIVE ACTION ON SB 35

02:45:32 **Motion:** Rep. Peterson moved that **SB 35 BE CONCURRED IN.**

Discussion:

02:45:51 Chairman Stoker

EXHIBIT(juh48a03)

02:46:19 Rep. Menahan

02:48:53 Chairman Stoker

02:49:53 Mr. Niss

02:56:40 Chairman Stoker

02:57:13 Rep. Peterson

02:57:49 Chairman Stoker

02:57:55 Rep. Peterson

02:58:04 Mr. Niss

02:58:51 Chairman Stoker

02:59:10 Mr. Niss

03:00:06 Chairman Stoker

03:00:11 **Motion:** Rep. Peterson moved that **SB 35 BE INDEFINITELY POSTPONED.**

03:00:24 Chairman Stoker

03:00:45 Rep. Howard

03:01:05 Chairman Stoker

03:01:34 Mr. Niss

03:02:10 Chairman Stoker

03:02:59 **Vote:** Motion failed 8-10 by roll call vote with Rep. Peterson, Rep. Kerns, Rep. Bennett, Rep. More, Rep. Wagner, Rep. Warburton, Rep. Stoker and Rep. Regier voting aye. Rep. Kottel and Rep. Blewett voted by proxy.

03:06:33 Rep. Peterson

03:06:36 Chairman Stoker

03:06:50 Rep. Peterson called the question.

03:06:57 Chairman Stoker

03:08:24 Rep. Kottel rejoined the meeting.

03:07:25 **Vote:** Motion that **SB 35 BE CONCURRED IN** carried unanimously by roll call vote. Rep. Blewett voted by proxy.

EXECUTIVE ACTION ON SB 40

03:08:40 Chairman Stoker

03:08:47 **Motion:** Rep. Peterson moved that **SB 40 BE CONCURRED IN.**

Discussion:

03:08:52 Chairman Stoker

03:08:55 Mr. Niss

EXHIBIT(juh48a04)

03:09:17 Rep. Kottel

03:09:32 **Motion:** Rep. Kottel moved that **SB 40 BE AMENDED** (refer to Exhibit 4).

Discussion:

03:09:40 Chairman Stoker

03:09:52 Rep. Kottel

03:09:56 Rep. McClafferty exited meeting.

03:10:02 Chairman Stoker
 03:10:09 Mr. Niss
 03:11:59 Chairman Stoker
 03:12:02 Rep. Sands
 03:12:16 Rep. Menahan
 03:12:25 Rep. Kottel
 03:13:01 Rep. Driscoll called the question.

03:13:08 **Vote:** Motion carried unanimously by voice vote. Rep. McClafferty and Rep. Blewett voted by proxy.

03:13:30 **Motion:** Rep. Peterson moved that **SB 40 BE CONCURRED IN AS AMENDED.**

Discussion:

03:13:37 Chairman Stoker
 03:13:42 Rep. More
 03:13:56 Rep. Kottel
 03:14:24 Rep. Peterson
 03:15:13 Chairman Stoker
 03:15:16 Rep. More
 03:15:55 Chairman Stoker
 03:16:09 Rep. Peterson called the question.
 03:16:11 Rep. Blewett rejoined the meeting.

03:16:13 **Vote:** Motion carried 16-2 by roll call vote with Rep. More and Rep. Wagner voting no. Rep. McClafferty voted by proxy.

03:17:08 Chairman Stoker
 03:22:55 Rep. Peterson

EXECUTIVE ACTION ON SB 45

03:23:13 Chairman Stoker

03:23:30 **Motion:** Rep. Peterson moved that **SB 45 BE CONCURRED IN.**

Discussion:

03:23:34 Chairman Stoker
 03:23:41 Rep. Menahan
 03:24:31 Rep. Peterson
 03:25:28 Rep. More
 03:25:43 Chairman Stoker
 03:26:34 Rep. Menahan
 03:26:45 Rep. Wagner

03:27:30 Rep. Kottel
03:29:10 Chairman Stoker
03:29:13 Rep. Peterson
03:29:26 Rep. Peterson called the question.
03:29:30 Chairman Stoker

03:29:30 **Vote:** Motion failed 5-13 by roll call vote with Rep. Kottel, Rep. Sands, Rep. Ebinger, Rep. Wagner, and Rep. McClafferty voting aye. Rep. McClafferty voted by proxy.

03:30:38 **Motion:** Rep. Peterson moved that **SB 45 BE TABLED AND THE VOTE REVERSED.**

03:30:40 Chairman Stoker

03:30:42 **Vote:** Motion carried unanimously by voice vote. Rep. McClafferty voted by proxy.

03:30:52 Chairman Stoker

ADJOURNMENT

03:31:01 Adjournment

Jennifer Eck, Secretary

je

Additional Documents:

EXHIBIT ([juh48aad.pdf](#))

Amendments to Senate Bill No. 40
3rd Reading Copy

Requested by Representative Deborah Kottel

For the House Judiciary Committee

Prepared by David Niss
March 3, 2009 (1:54pm)

1. Title, line 6.

Following: " ; "

Insert: "REQUIRING A FINDING THAT THERE IS A PERSON WILLING AND ABLE TO SERVE AS A FRIEND OF RESPONDENT AND CONSENT OF THE RESPONDENT PRIOR TO APPOINTMENT OF A FRIEND OF RESPONDENT; "

2. Title, line 7.

Following: "RESPONDENT"

Insert: "AT THE REQUEST OF THE RESPONDENT OR"

3. Page 4, line 2.

Strike: "and a friend of respondent"

4. Page 4, lines 6 and 7.

Strike: "The desires" on line 6 through "respondent" on line 7

Insert: "If the court finds that an appropriate person is willing and able to perform the functions of a friend of respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent"

5. Page 4, lines 8 and 9.

Strike: "to perform the functions of a friend of respondent set out in this part"

6. Page 4, line 12.

Following: the second "respondent"

Insert: "at the request of the respondent or"

- END -

BUSINESS REPORT

**MONTANA HOUSE OF REPRESENTATIVES
61st LEGISLATURE - REGULAR SESSION**

HOUSE JUDICIARY COMMITTEE

Date: Wednesday, March 4, 2009
Place: Capitol

Time: 8:00 am
Room: 137

BILLS and RESOLUTIONS HEARD:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Add Postponed (PP) when appropriate:

HB 525, SB 45, SB 140

EXECUTIVE ACTION TAKEN:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Enter P(pass) F(failed) DPAA (do pass as amended) BC(be concurred in) BCAA (be concurred in as amended):

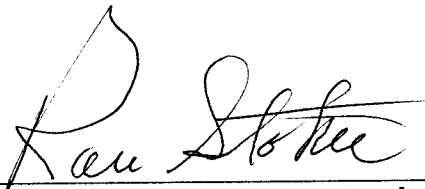
SB 140 ~~(P)~~ (BC)

SB 35 ~~(DPAA)~~ (BC)

SB 40 ~~(DPAA)~~ (BCAA)

SB 45 (Failed and tabled)

COMMENTS:



REP. Ron Stoker, Chairman

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE: 3/4/09

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
Rep. Peterson	X	
Rep. Kottel	X	
Rep. Kerns	X	
Rep. Sands	X	
Rep. Bennett	X	
Rep. MacDonald	X	
Rep. More	X	
Rep. Ebinger	X	
Rep. Wagner	X	
Rep. Becker	X	
Rep. Driscoll	X	
Rep. Regier	X	
Rep. McClafferty	X	
Rep. Howard	X	
Rep. Blewett	X	
Rep. Warburton	X	
Rep. Menahan	X	
Rep. Stoker	X	



HOUSE STANDING COMMITTEE REPORT

March 4, 2009

Page 1 of 2

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 40** (third reading copy – blue) be concurred in as amended.

Signed: _____

Ron Stoker
Representative Ron Stoker, Chair

To be carried by Representative Deborah Kottel

And, that such amendments read:

1. Title, line 6.

Following: ";"

Insert: "REQUIRING A FINDING THAT THERE IS A PERSON WILLING AND ABLE TO SERVE AS A FRIEND OF RESPONDENT AND CONSENT OF THE RESPONDENT PRIOR TO APPOINTMENT OF A FRIEND OF RESPONDENT;"

2. Title, line 7.

Following: "RESPONDENT"

Insert: "AT THE REQUEST OF THE RESPONDENT OR"

3. Page 4, line 2.

Strike: "and a friend of respondent"

4. Page 4, lines 6 and 7.

Strike: "The desires" on line 6 through "respondent" on line 7

Insert: "If the court finds that an appropriate person is willing and able to perform the functions of a friend of respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent"

5. Page 4, lines 8 and 9.

Committee Vote:

Yes 16, No 2

Fiscal Note Required ☐

SB0040001SC05184.hjd

Strike: "to perform the functions of a friend of respondent set out in this part"

6. Page 4, line 12.

Following: the second "respondent"

Insert: "at the request of the respondent or"

- END -



HOUSE STANDING COMMITTEE REPORT

March 4, 2009

Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 140** (third reading copy – blue) **be concurred in.**

Signed: _____

Ron Stoker
Representative Ron Stoker, Chair

To be carried by Representative Mike Menahan

- END -

Committee Vote:

Yes 11, No 7

Fiscal Note Required ☐

SB0140001SC06475.hjd



HOUSE STANDING COMMITTEE REPORT

March 4, 2009

Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 35** (third reading copy – blue) be concurred in.

Signed: _____

Ron Stoker
Representative Ron Stoker, Chair

To be carried by Representative Robyn Driscoll

- END -

Committee Vote:

Yes 18, No 0

Fiscal Note Required ☐

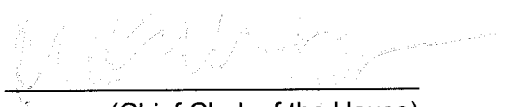
SB0035001SC03852.hjd

COMMITTEE FILE COPY

TABLED BILL

The **HOUSE JUDICIARY COMMITTEE** TABLED **SB 45**, by motion, on **Wednesday, March 4, 2009**.

(For the Committee)



(Chief Clerk of the House)

(Time)



(Date)

March 4, 2009

Jennifer L. Eck, Secretary

Phone: 444-4832

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 3/4/09 BILL NO SB 140 MOTION NO. _____

MOTION: _____
SB 140 BE CONCURRED IN.

<u>NAME</u>	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
Ken Peterson		X	
Deborah Kottel	X		X
Krayton Kerns		X	
Diane Sands	X		
Gerald Bennett		X	
Margaret MacDonald	X		
Michael More		X	
Bob Ebinger	X		
Bob Wagner		X	
Arlene Becker	X		
Robyn Driscoll	X		
Keith Regier		X	
Edith McClafferty	X		
David Howard		X	
Anders Blewett	X		X
Wendy Warburton	X		
Mike Menahan	X		
Ron Stoker	X		

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HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 3/4/09 BILL NO SB 40 MOTION NO. _____
 MOTION: _____

SB 40 BE CONCURRED IN AS AMENDED

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
Ken Peterson	X		
Deborah Kottel	X		
Krayton Kerns	X		
Diane Sands	X		
Gerald Bennett	X		
Margaret MacDonald	X		
Michael More		X	
Bob Ebinger	X		
Bob Wagner		X	
Arlene Becker	X		
Robyn Driscoll	X		
Keith Regier	X		
Edith McClafferty	X		X
David Howard	X		
Anders Blewett	X		
Wendy Warburton	X		
Mike Menahan	X		
Ron Stoker	X		

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HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE _____ BILL NO _____ MOTION NO. _____

MOTION: _____

DO DELAY ACTION ON SB 35

<u>NAME</u>	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
Ken Peterson	X		
Deborah Kottel		X	X
Krayton Kerns	X		
Diane Sands		X	
Gerald Bennett	X		
Margaret MacDonald		X	
Michael More	X		
Bob Ebinger		X	
Bob Wagner	X		
Arlene Becker		X	
Robyn Driscoll		X	
Keith Regier	X		
Edith McClafferty		X	
David Howard		X	
Anders Blewett		X	X
Wendy Warburton	X		
Mike Menahan		X	
Ron Stoker	X		

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HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 3/4/09 BILL NO SB 35 MOTION NO. _____
 MOTION: _____

DO CONCUR IN SB 35.

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	<u>If Proxy Vote, check here & include signed Proxy Form with minutes</u>
Ken Peterson	X		
Deborah Kottel	X		
Krayton Kerns	X		
Diane Sands	X		
Gerald Bennett	X		
Margaret MacDonald	X		
Michael More	X		
Bob Ebinger	X		
Bob Wagner	X		
Arlene Becker	X		
Robyn Driscoll	X		
Keith Regier	X		
Edith McClafferty	X		
David Howard	X		
Anders Blewett	X		X
Wendy Warburton	X		
Mike Menahan	X		
Ron Stoker	X		

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 3/4/09 BILL NO SB 45 MOTION NO. _____
 MOTION: _____

SB 45 BE CONCURRED IN.

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
Ken Peterson		X	
Deborah Kottel	X		
Krayton Kerns		X	
Diane Sands	X		
Gerald Bennett		X	
Margaret MacDonald		X	
Michael More		X	
Bob Ebinger	X		
Bob Wagner	X		
Arlene Becker		X	
Robyn Driscoll		X	
Keith Regier		X	
Edith McClafferty	X		X
David Howard		X	
Anders Blewett		X	
Wendy Warburton		X	
Mike Menahan		X	
Ron Stoker		X	

5 13

**AUTHORIZED
COMMITTEE PROXY**

I request to be excused from the Judiciary

Committee because of other commitments. I desire to leave my proxy vote with:

Diane Sands ?

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
SB 40 Amended	✓	
SB 40	X	
SB 45	X	

BILL/AMENDMENT	AYE	NO

Rep. Edith McChafferty
(Signature)

Date 3/4/09

AUTHORIZED COMMITTEE PROXY

I request to be excused from the judiciary

Committee because of other commitments. I desire to leave my proxy vote with:

Alan Ford

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT

AYE NO

BILL/AMENDMENT

AYE NO

SB 140	X	
11-7 passed		
SB 35		
Constitution Amendment held		
Delay		X

Rep. KOTTEL
(Signature)

Date 3-5-09

AUTHORIZED COMMITTEE PROXY

I request to be excused from the Judiciary

Committee because of other commitments. I desire to leave my proxy vote with:

Deane Anderson

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT

AYE NO

BILL/AMENDMENT

AYE NO

SB 140	X	
11-7 passed		
SB 35	X	
Constitution Amendment 10		
Dealing		X
SB 40 Am	X	

Rep.

(Signature)

Date

3-5-09

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE

Date 3/4/09

Bill No. SB 45 Sponsor(s) Rep. McGee

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Lee Gallaway	NRAM 1216		X	
Jim Smith	County Atty's		+	
Walter				
Randi Wood	OPD	+		
Sheryl Wood	MACO		+	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Bill No. HB 525 Sponsor(s) Rep. Driscoll

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE

Date 3/4/09

Bill No. SB 140 Sponsor(s) Rep. Perry

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Mr. Brundage	AG's office	✓		
Judy Pyle	MCADSV	✓		
Eve Franklin	Gov's Office	✓		
MATTHEW XYLE	NOT	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.